IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

AR.No. 14 of 2007()

PETITIONER:

M/S. G.K.GRANITES LTD., HAVING ITS REGISTERED OFFICE AT OORAKKAD, KIZHAKKAMBALAM P.O., ERNAKULAM DISTRICT, KERALA STATE, A PUBLIC LIMITED COMPANY REP. BY ITS MANAGING DIRECTOR, SRI.GEORGE ANTONY.

BY ADV. SRI.JOSE ABRAHAM

RESPONDENT:

M/S. PATI BEL JV, PROJECT OFFICE (NORTH), CVP GARDENS, PERUMTHURUTHY P.O., THIRUVALLA, PATHANAMTHITTA, DISTRICT, REPRESENTED BY ITS ACTING PROJECT MANAGER SRI. WONG HOI WAY.

BY ADV. SRI.K.SUBASH CHANDRA BOSE
SRI.V.RAJASEKHARAN PILLAI

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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ARBITRATION REQUEST No.14 OF 2007

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DATED THIS THE 14TH JUNE, 2007

O R D E R

The applicant, a Company engaged in the business of quarrying, crushing, distribution and supply of rubble and allied materials used in construction industry, has filed this Arbitration Request under Section 11(6) of the Arbitration and Conciliation Act, 1996 requesting that an impartial arbitrator be appointed for settling the dispute between the applicant and the respondent over a supply agreement dated 14.7.2003 executed between the parties for supply of rubble and allied materials for the execution of road construction works, to undertake which the Kerala State Transport Project had given contract to the respondent-Company. Annexure-A1 is copy of the supply agreement dated 14.7.2003 and the case of the applicant is that the applicant has performed their part under the above agreement and that more than Rs.6.5 Crores has been invested for the purchase and development of mine land in Manimala in Kottayam District and that even a three-stage crusher unit has been established by the applicant. The applicant alleges that the respondent started violating the terms and conditions of the agreement one by one and finally stopped taking materials from the applicant from September, 2006 for reasons not

known to the applicant. The applicant has come to know from reliable sources and newspapers that the respondent has abandoned KSTP Project and the Government of Kerala has already started necessary arrangements for re-tendering the work. The applicant complains that till date the respondent has not informed these matters to the applicant and the enquiries made by the applicant reveals that the respondent is winding up its operations in India and all its Offices, except the one situated at Thiruvalla, have been closed down. According to the applicant, the respondent is liable to pay an amount of Rs.6,61,42,440/- to the applicant and despite several requests and reminders, the respondent failed to pay the amount. Annexure-A1 at Clause 12.1 contains a clear agreement for arbitration and several registered letters (Annexures A2, A3 and A4) sent to the respondent requesting for settlement of the claims have turned futile. Ultimately, invoking the arbitration clause, the applicant sent Annexure-A9 letter on 19.3.2007 appointing Dr.Justice K.Narayana Kurup, former Judge of this Court as sole arbitrator. Through Annexure-A9, the respondent was called upon to suggest any other person of their choice as arbitrator within 15 days so as to facilitate appointment of a third arbitrator for resolving the disputes in terms of the arbitration

agreement. Even after the expiry of 30 days since receipt of Annexure-A9, the respondent has not responded.

2. A detailed counter affidavit has been filed by the respondent denying the claims and repudiating the contentions. But ultimately it is prayed that this Court may appoint any retired Judge of this Court other than the one nominated by the applicant.

3. Having gone through the rival pleadings and the documents placed on record by either sides and having heard the submissions and having noticed that the person who is nominated by the applicant is otherwise busily engaged, I am of the view that Mr.Justice T.V.Ramakrishnan, retired Judge of this Court, known for his efficiency and integrity, can be appointed as Arbitrator.

The Arbitration Request will accordingly stand allowed. Mr.Justice T.V.Ramakrishnan, retired Judge of this Court is appointed as Arbitrator to adjudicate and settle the disputes which are subject-matter of Annexure-A9. The Arbitrator will commence the proceedings and pass award at the earliest.

(PIUS C.KURIAKOSE, JUDGE)

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